

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated December 4, 2009 (hereinafter Office Action) have been considered. Claims 86-123 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 86, 88-89, 91-98, 101, 104, 106-107, 109, 111-117 and 121 are rejected based on 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,902,250 to Verrier et al. (hereinafter “Verrier”) in view of U.S. Publication No. 2005/0119711 by Cho et al. (hereinafter “Cho”) and further in view of U.S. Publication No. 2003/0083241 by Young (hereinafter “Young”).

Independent claim 86 expresses detecting a condition associated with REM-sleep comprising sensing muscle tone in a pectoral region of a patient. Independent claim 104 includes a sensor suitable for sensing muscle tone in a pectoral region of the patient. The Applicant respectfully asserts that the combination of Verrier, Cho and Young at least fails to teach or suggest detecting a condition associated with REM-sleep comprising sensing a muscle tone in a pectoral region of the patient.

On page 4, the Office Action correctly states that Verrier and Cho do not disclose sensing a muscle tone in a pectoral region of a patient. The Office relies solely on the teachings of Young to describe sensing a muscle tone in a pectoral region of a patent. The Office Action refers to paragraph 0047 of Young in support of the rejections for detecting a condition associated with REM-sleep comprising sensing a muscle tone in a pectoral region of a patient. At this section, Young describes that atonia of the postural muscles develops during normal REM-sleep. Young does not describe a sensor for detecting muscle tone in a pectoral region nor does it discuss detecting a condition associated with REM-sleep comprising sensing a muscle tone in a pectoral region of a patient. Young does not discuss *sensing* pectoral muscle tone at all. The combination of Verrier, Cho, and Young does not describe each element of Applicant’s claims 86 and 104. For at least these reasons, Applicant’s claims 86 and 104 and all claims dependent thereon are not obvious in view of the combination of Verrier, Cho, and Young.

Claims 87 and 105 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Verrier in view of Cho and Young and further in view of U.S. Patent No. 6,387,907 to Hendricks et al. (hereinafter “Hendricks”). Claims 99 and 118-119 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Verrier in view of Cho and Young and further in view of U.S. Patent No. 6,572,557 to Tchou et al. (hereinafter “Tchou”). Claims 102-103 and 122-123 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Verrier in view of Cho and Young and further in view of U.S. Publication No. 2003/0111079 by Mathews et al. (hereinafter “Mathews”) and further in view of U.S. Publication No. 2004/0249299 by Cobb (hereinafter “Cobb”).

Each of the rejections of dependent claims 87-103 and 105-123 relies on the combination of Verrier, Cho, and Young to teach or suggest all of the elements of independent claims 86 and 104 from which these claims depend. Applicant reasserts the arguments above regarding the failure of Verrier, Cho, and Young to teach or suggest all of the elements of claims 86 and 104. Hendricks, Tchou, or Mathews and Cobb in combination with Verrier, Cho, and Young also fail to teach or suggest all of the elements claims 86 and 104. While Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 86 and 104. These dependent claims include all of the limitations of the base claims and any intervening claims, and recite additional features which further distinguish these claims from the cited references.

To the extent the Applicant has not responded to any characterization by the Examiner of the asserted art or of the Applicant’s claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, the Applicant wishes to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner’s characterizations, or any other assertions or statements beyond that provided above is unnecessary in view of the present response. The Applicant reserves the right to address in detail any such assertions or statements in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.060PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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